

§ 275.0-7

17 CFR Ch. II (4-1-12 Edition)

(f) *Definition of Application.* For purposes of this rule, an “application” means any application for an order of the Commission under the Act other than an application for registration as an investment adviser.

NOTE: Prior to incorporating by reference any document as an exhibit to an application, applicants are advised to review § 228.10(f) and § 229.10(d) of this chapter as in effect at the time the application is filed to determine whether such incorporation by reference would be permissible under that rule.

[41 FR 39020, Sept. 14, 1976, as amended at 60 FR 32825, June 23, 1995]

§ 275.0-7 Small entities under the Investment Advisers Act for purposes of the Regulatory Flexibility Act.

(a) For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.) and unless otherwise defined for purposes of a particular rulemaking proceeding, the term *small business* or *small organization* for purposes of the Investment Advisers Act of 1940 shall mean an investment adviser that:

(1) Has assets under management, as defined under Section 203A(a)(3) of the Act (15 U.S.C. 80b-3a(a)(2)) and reported on its annual updating amendment to Form ADV (17 CFR 279.1), of less than \$25 million, or such higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act (15 U.S.C. 80b-3a(a)(1)(A));

(2) Did not have total assets of \$5 million or more on the last day of the most recent fiscal year; and

(3) Does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more (or such higher amount as the Commission may deem appropriate), or any person (other than a natural person) that had total assets of \$5 million or more on the last day of the most recent fiscal year.

(b) For purposes of this section:

(1) *Control* means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.

(i) A person is presumed to control a corporation if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation’s voting securities; or

(B) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation’s voting securities.

(ii) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.

(iii) A person is presumed to control a limited liability company (LLC) if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC;

(B) Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or

(C) Is an elected manager of the LLC.

(iv) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(2) *Total assets* means the total assets as shown on the balance sheet of the investment adviser or other person described above under paragraph (a)(3) of this section, or the balance sheet of the investment adviser or such other person with its subsidiaries consolidated, whichever is larger.

[63 FR 35515, June 30, 1998, as amended at 65 FR 57448, Sept. 22, 2000; 76 FR 43011, July 19, 2011]

§ 275.202(a)(1)-1 Certain transactions not deemed assignments.

A transaction which does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of section 205(a)(2) of the Act.

[51 FR 32907, Sept. 17, 1986; 64 FR 2567, Jan. 15, 1999]

§ 275.202(a)(11)(G)-1 Family offices.

(a) *Exclusion.* A family office, as defined in this section, shall not be considered to be an investment adviser for purpose of the Act.

(b) *Family office.* A family office is a company (including its directors, partners, members, managers, trustees, and employees acting within the scope of their position or employment) that:

(1) Has no clients other than family clients; provided that if a person that